

FREQUENTLY ASKED QUESTIONS

Immigrants, Taxes, and the Affordable Care Act

NOVEMBER 2014

The Patient Protection and Affordable Care Act (ACA) established health insurance marketplaces to make it easier for people to buy health insurance, and it provides for income-based subsidies to make insurance more affordable for the people who buy it. The ACA requires that all United States citizens and lawfully present noncitizens either be covered by health insurance or pay a financial penalty.¹ There are some exceptions to this requirement,² which is often called the “individual mandate.” For example, people who are not lawfully present, have an income below the tax-filing threshold, or cannot afford to buy health insurance, even with subsidies, are not required to have health insurance.

Several aspects of ACA implementation relate to the filing of taxes. Federal tax returns are used to verify income and determine eligibility for subsidies, which are provided in the form of tax credits applied to monthly premium costs. Income-eligibility for this premium tax credit is calculated based on the tax household’s income from the most recent tax year. Any under- or over-payment of subsidies is reconciled on the following year’s tax return. Federal tax returns are also used to report health insurance coverage or to claim an exemption from the individual mandate, and to assess a tax penalty if the person does not have health insurance and does not qualify for an exemption from the mandate.

This FAQ explores tax-related ACA issues that are of particular concern to immigrants and their families.

Individual Taxpayer Identification Number (ITIN) and Social Security Number (SSN)–related questions

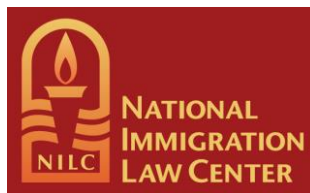
- Am I required to provide information about my immigration status to the health insurance marketplaces or to the Internal Revenue Service (IRS) if I am applying only on behalf of an eligible family member?

No. Noncitizens who are not eligible for health insurance through the health insurance marketplaces may apply on behalf of eligible family members as “nonapplicants” without providing information about their own immigration status.

- Am I required to provide an SSN when applying to buy coverage for my eligible family members?

Generally, no. As a “nonapplicant,” you are not required to provide an SSN unless all of the following are true: (1) you have a valid SSN issued by the Social Security Administration (SSA), (2) you are your household’s primary tax filer, (3) you are seeking tax credits to help subsidize the cost of your eligible family members’ insurance premiums, and (4) you filed a

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tax return for the most recent tax year. However, if you do have a valid SSN, providing it could speed up the processing of your application by enabling the health insurance marketplace to verify your income more quickly.

■ **Should I provide my ITIN to the health insurance marketplace when applying for coverage for my family members?**

Generally, no. An ITIN is a tax-processing number issued to taxpayers who are not eligible to obtain an SSN, and to their dependents, so that they can file federal income tax returns. The federal health care marketplace — www.healthcare.gov — cannot use an ITIN to verify your income with the IRS. Some state-based marketplaces, however, may use ITINs to check information against state databases.

■ **I was issued an SSN, but then my visa expired. Am I eligible to buy health insurance through the ACA marketplace?**

No. You must be lawfully present in the U.S. to be eligible to buy health insurance for yourself through the marketplace. An SSN is not sufficient evidence of a person’s immigration status. Once issued, an SSN can remain valid even after the person’s immigration status has expired. It does not, by itself, show that a person is lawfully present in the U.S.

■ **I am lawfully present but don’t have an SSN. Can I buy health insurance through the ACA marketplace?**

Yes. While having an SSN may make the application process easier or faster by streamlining the verification of your income, it is not required. Many people who are lawfully present in the U.S. are not eligible for an SSN. This includes certain domestic violence survivors, trafficking survivors, some Cuban and Haitian entrants, and some nonimmigrant visa-holders who are not authorized to work.

■ **Will providing personal information through the health insurance marketplaces or to the IRS trigger immigration enforcement actions?**

No. U.S. Immigration and Customs Enforcement (ICE) has stated explicitly that any information provided through the health insurance marketplaces will be used solely to determine eligibility for health coverage. ICE’s policy is that it will not use this information as a basis for pursuing civil immigration enforcement action, regardless of whether it is provided by a federal agency or another source.³

In addition, the Internal Revenue Code (IRC) has strict confidentiality laws that prevent the release of information on a federal income tax return.⁴

Questions about ACA eligibility for nonimmigrant visa-holders

■ **I live and work in the U.S., with a nonimmigrant visa. Am I eligible to buy health insurance through the ACA marketplace?**

Maybe. You may be eligible to buy health insurance through the marketplace if you meet the ACA definitions of being (a) lawfully present and (b) a resident of your state. (It is

important to note that the term “resident” has different meanings under the ACA, immigration law, and state laws.)

If you have a valid nonimmigrant visa, you will be considered “lawfully present” under the ACA. To be considered a state resident under the ACA rules, generally you must be living in the state and intend to reside there indefinitely, or have entered the state with a job commitment or to seek employment.

State residence is assessed independently from the lawful presence determination. Certain nonimmigrant visas, however, may require that the visa-holder maintain a residence abroad. Depending on the terms of your visa and other individual circumstances, claiming state residency could affect your immigration status or your ability to adjust to permanent resident status or to reenter the U.S. in the future. People with such nonimmigrant visas should consult with an immigration lawyer before buying health insurance through the ACA marketplace.

■ **I live and work in the U.S. a few months per year, with a nonimmigrant visa. Am I subject to the “individual mandate” and required to buy health insurance through the ACA marketplace?**

Maybe. If you do not live in the U.S. year-round, you may be considered a “nonresident alien” for tax purposes.⁵ Nonresident aliens are considered “exempt noncitizens” and are not required to buy health insurance.

Some nonresident aliens (as defined by tax law) can choose whether to apply for health insurance through the marketplace or to claim an exemption from the individual mandate. Although nonresident aliens are exempt from the individual mandate, they may apply for coverage through the health insurance marketplace if they are state residents under the ACA rules.

If you are a nonresident alien who wishes to claim an exemption from the individual mandate, you should claim the exemption when you file your income tax returns. If you do not have a tax-filing obligation (for example, if you either have no income or are below the income threshold for filing), you do not need to do anything to claim the exemption.

■ **I am a nonimmigrant visa–holder and work in the U.S. while my spouse and children stay in my home country. Can I get tax credits to help pay the cost of buying health insurance through the ACA marketplace?**

Maybe. Married couples cannot get tax credits through the health insurance marketplace to help pay for their health insurance premiums unless they file taxes jointly with their spouses.⁶ Exceptions apply to survivors of domestic violence and people eligible to file as a “head of household.”

A person living in the U.S. who has a spouse living abroad can file as “married filing jointly” if the spouse residing in the home country is treated as a resident alien for tax purposes. If so, both spouses will be treated as residents for federal income tax purposes for the entire tax year. If you elect to do this, you and your spouse will be taxed on your worldwide income, and you will not be able to claim to be a nonresident of the U.S. under any tax treaty. Your spouse will need to apply for an ITIN, if she or he does not already have one (and does not have an SSN), and submit the ITIN application with the tax return.

Alternatively, if a child or other qualifying relative lived with you for more than half the tax year, you may be eligible to file as a “head of household.”⁷ Head-of-household filers are considered unmarried for tax purposes and can receive tax credits to help pay for their health insurance without filing a joint tax return.

Questions related to the exemptions from the “individual mandate”

- **Can I buy health insurance and get insurance-premium tax credits through the health insurance marketplace even though I have never earned enough money to file U.S. taxes?**

Yes. If you meet all the other eligibility requirements and you plan to file federal income tax returns next year, you can buy coverage and receive subsidies through the health insurance marketplace. The health insurance marketplace normally verifies an applicant’s income based on the information on his or her last federal income tax return. If you did not file taxes last year, you may be asked to upload or mail in copies of documents, such as pay stubs, to verify your income.

- **I am an undocumented immigrant ineligible to buy health insurance through the ACA marketplace. How do I show that I am exempt from having to buy health insurance?**

The IRS will make available a form — Form 8965 — for claiming exemptions from the requirement to have health insurance. You should file the form with your federal income tax return. It will not require you to disclose your immigration status. You will simply need to indicate that one of several exemptions applies to you.

If you are not required to file tax returns because your income is too low, you do not need to do anything to claim your exemption.

Household composition–related questions

- **If I claim my parents as dependents on my taxes, will I be penalized if they do not have health insurance?**

Yes, unless they are exempt from coverage. If you claim your parents as dependents on your tax return,⁸ and they are not exempt from the individual mandate, you could be assessed a tax penalty if they do not get health insurance.

- **I sponsored my parents to immigrate to the U.S. and signed an affidavit of support to show that they are not likely to become dependent on the government for cash income or long-term care as a “public charge.”⁹ Am I required to buy health coverage for my parents?**

No. Once they have filed an application to adjust to lawful permanent residence, your parents are lawfully present under the ACA and, therefore, potentially eligible to buy health insurance and receive premium tax credits through the health insurance marketplaces.¹⁰

Sponsoring your parents or any other relative and signing an affidavit of support does not require you to buy health insurance for them.

- If I am sponsoring my parents to immigrate to the U.S. and signed an affidavit of support, will my income be added to theirs in determining their insurance-premium tax credits?

Not necessarily. If you claim your parents as dependents in your tax household, the entire household's income will be counted for purposes of determining what amount of health insurance premium tax credits your parents will receive.

On the other hand, if your parents file taxes on their own and cannot be claimed as your dependents, only their income will be counted for purposes of calculating their premium tax credits.

For more information

IRS Publication 519: www.irs.gov/publications/p519/index.html

NILC's fact sheet on ITINs: www.nilc.org/itinfaq.html

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¹ For a list of categories of people who are “lawfully present” and eligible for coverage under the ACA, see www.nilc.org/document.html?id=809. Note that, while immigrants granted deferred action are eligible for coverage under the ACA, those who have been granted this relief specifically through the Deferred Action for Childhood Arrivals (DACA) program are excluded from coverage. See www.nilc.org/acadacafaq.html.

² For a complete list of exemptions, see <https://www.healthcare.gov/fees-exemptions/exemptions-from-the-fee/>.

³ For more information on ICE policy with respect to the ACA, see *Clarification of Existing Practices Related to Certain Health Care Information* (U.S. Immigration & Customs Enforcement, Oct. 25, 2013), www.ice.gov/doclib/ero-outreach/pdf/ice-aca-memo.pdf or www.ice.gov/espanol/factsheets/aca-memoSP (Spanish-language version).

⁴ For more information on confidentiality and disclosure laws (and the limited exception) relating to federal income tax returns under IRC section 6103, see www.irs.gov/Government-Entities/Federal,-State-&-Local-Governments/Disclosure-Laws.

⁵ It is important to remember that “resident alien” and “nonresident alien” mean very different things for immigration purposes and for tax purposes. With respect to tax definitions, a noncitizen generally is classified as a “resident alien” if she either (a) is a lawful permanent resident (LPR), in which case she is considered a resident for both tax and immigration purposes; or (b) meets the “substantial presence” test (more information on this test can be found at www.irs.gov/Individuals/International-Taxpayers/Substantial-Presence-Test). Any other noncitizen will be classified as a “nonresident alien.”

⁶ There are several filing statuses on a federal income tax return, including “single,” “married filing separately,” “married filing jointly,” and “head of household.” For more information on filing status, see www.irs.gov/uac/Newsroom/Determining-Your-Correct-Filing-Status.

⁷ The IRS provides an interactive tax assistant that can be used to determine whether you qualify for “head of household” status — see www.irs.gov/uac/What-is-My-Filing-Status%3F.

⁸ In general, you can claim your parent as your dependent if (a) you provide more than half of his or her support, including the costs of food, shelter, clothing and medical expenses, (b) his or her gross income is less than a small exemption amount, and (c) he or she is a U.S. citizen or resides in the United States, Canada, or Mexico. For more information on dependents, see www.irs.gov/publications/p17/cho3.html#en_US_2013_publink1000170967.

⁹ Receiving health care, other than long-term care at government expense, will not cause a person to be considered a public charge. See www.nilc.org/pubcharge.html.

¹⁰ Note that a person who can be claimed on someone else’s tax return as a dependent is not eligible to receive premium tax credits unless the person applies as part of that taxpayer’s household. See 45 CFR § 155.300 (definition of tax filer), 45 CFR § 155.305(f).